

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENISE HARLAN,

Plaintiff,

vs.

NRA GROUP, LLC d/b/a NATIONAL  
RECOVERY AGENCY

and

BUSINESS OFFICE SOLUTIONS, a  
division of NATIONAL RECOVERY  
AGENCY,

Defendants.

CIVIL ACTION

NO. 10-CV-324(CMR)

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2010, upon consideration of Defendant NRA Group, LLC d/b/a National Recovery Agency, et al.'s Motion for Summary Judgment (Doc. No. 16), and Plaintiff's Opposition and Cross-Motion for Summary Judgment (Doc. No. \_\_\_\_), Defendant's Motion is DENIED.

Plaintiff's Motion for Judgment on the Pleadings (Doc. No. 10) is hereby converted to a Motion for Summary Judgment pursuant to Fed. R. Civ. Pro. 12(d) and Plaintiff's Cross-Motion for Summary Judgment is GRANTED.

JUDGMENT is hereby entered for Plaintiff Denise Harlan and against Defendants, NRA Group, LLC d/b/a National Recovery Agency and Business Office Solutions, a division of National Recovery Agency for \$1,000.00. *See* 15 U.S.C. § 1692k(a)(2)(A).

Plaintiff may petition the Court for reasonable attorney's fees and costs for this successful action pursuant to Fed. R. Civ. Pro. 54(d)(2) within fourteen (14) days of this Order.

BY THE COURT:

\_\_\_\_\_  
U.S.D.J.

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Defendants.

CIVIL ACTION

NO. 10-CV-324(CMR)

**PLAINTIFF'S OPPOSITION TO**  
**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**  
**AND CROSS-MOTION FOR SUMMARY JUDGMENT**

Plaintiff Denise Harlan hereby opposes Defendant's Motion for Summary Judgment (Doc. No. 16) and Cross-Moves for Summary Judgment for Plaintiff. For the reasons articulated in the Memorandum filed herewith and the briefing associated with Plaintiff's pending 12(c) Motion (Doc. Nos. 10, 15) which is incorporated herein, Defendant's Motion for Summary Judgment should be denied, and Plaintiff's Cross-Motion for Summary Judgment should be granted.

Respectfully submitted:

Date: 07/23/10

/s/Andrew M. Milz (AMM8059)

CARY L. FLITTER

THEODORE E. LORENZ

ANDREW M. MILZ

Attorneys for Plaintiff

**LUNDY, FLITTER, BELDECOS &**

**BERGER, P.C.**

450 N. Narberth Avenue

Narberth, PA 19072

(610) 822-0781

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Defendants.

CIVIL ACTION

NO. 10-CV-324(CMR)

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO**  
**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**  
**AND IN SUPPORT OF PLAINTIFF'S CROSS-**  
**MOTION FOR SUMMARY JUDGMENT**

Plaintiff Denise Harlan hereby responds in opposition to Defendant NRA Group, LLC d/b/a National Recovery Agency, et al.'s Motion for Summary Judgment (Doc. No. 16), cross-moves for summary judgment, and states as follows:

1. On January 25, 2010, Plaintiff filed her Complaint (Doc. No. 1) in this matter alleging that Defendant debt collector violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692e and g.

2. Defendant answered (Doc. No. 5) and on April 27, 2010, a telephone conference was held with the Court at which point the parties agreed to present the matter to the Court on Motions for Judgment on the Pleadings.

3. On May 26, 2010, Plaintiff filed her Motion for Judgment on the Pleadings (Doc. No. 10), arguing on the strength of several opinions from Pennsylvania Federal District Courts, that she was entitled to judgment as a matter of law. *See Smith v. Hecker*, 2005 WL 894812 (E.D. Pa. April 18, 2005); *Nelson v. Select Fin. Servs.*, 430 F. Supp. 2d 455 (E.D. Pa. 2006) and *Galuska v. Collectors Training Instit. of Ill., Inc.*, 2008 WL 2050809 (M.D. Pa. May 13, 2008).

4. On June 8, 2010, Defendant responded (Doc. No. 11), and on June 15, 2010, the Court granted Plaintiff's Motion for Leave to File a Reply (Doc. No. 14) and the Reply (Doc. No. 15) was docketed.

5. Then, inexplicably, on July 9, 2010, with the dispositive 12(c) motions pending, Defendant moved for summary judgment. The Motion for Summary Judgment raised only the same issues already addressed in the earlier briefing on the Motion for Judgment on the Pleadings.

6. In support of its Motion for Summary Judgment, Defendant pasted the exact same arguments it lodged in response to Plaintiff's Motion for Judgment on the Pleadings. (*Compare* Doc. No. 11 with Doc. No. 16).

7. Although there are no issues of material fact in dispute, it is the consumer, not the collector who is entitled to judgment. Defendant's Motion for Summary Judgment should be denied. If for some reason the Court considers the case on summary judgment, then summary judgment should be granted in favor of Plaintiff.

8. For the reasons articulated in Plaintiff's Motion for Judgment on the Pleadings and the Memoranda in support thereof (*see* Doc. Nos. 10 & 15), there are no issues of fact in dispute and Plaintiff is entitled to judgment as a matter of law.

9. Should the Court convert Plaintiff's 12(c) motion and grant summary judgment for Plaintiff, judgment should be entered in the amount of \$1,000.00 pursuant to the FDCPA, § 1692k(a)(2)(A).

10. As set forth in the Certification of Andrew M. Milz, Esquire, counsel for Plaintiff, and attachment thereto, Defendant has agreed that damages in this matter are fixed at \$1,000.00 (if there is liability) and that attorney's fees and costs for a successful action will be determined upon application to the Court (if not settled by the parties).

11. Accordingly, there are no disputed issues of fact about the amount of damages which would preclude a grant of judgment in favor of Plaintiff on liability and damages.

12. The only reason Plaintiff here cross-moves is that damages have been agreed upon (if liability is found) and a dispositive finding for Plaintiff could resolve both liability and damages, 15 U.S.C. § 1692k, leaving only counsel fees to be resolved.

13. As the remaining law and facts are addressed at length in Plaintiff's Motion for Judgment on the Pleadings and supporting memoranda, there is no need to burden the Court with the time and effort related to responding to a separate motion, and accordingly, Plaintiff incorporates all of her arguments raised in her Motion for Judgment on the Pleadings, Memorandum in support thereof, and her Reply in support of that Motion (Doc. Nos. 10, 15).

WHEREFORE, Plaintiff Denise Harlan respectfully requests that Defendant's Motion for Summary Judgment be denied. Conversely, if not disposed of on the pending Judgment on the Pleadings, Plaintiff's Cross-Motion for Summary Judgment should be granted, and judgment entered for Plaintiff in the amount of \$1,000.00 with attorney's fees and costs to be awarded upon petition to the Court.

Respectfully submitted:

Date: 07/23/10

/s/Andrew M. Milz (AMM8059)

CARY L. FLITTER

THEODORE E. LORENZ

ANDREW M. MILZ

Attorneys for Plaintiff

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**CERTIFICATE OF SERVICE**

I, Andrew M. Milz, hereby certify that on July 23, 2010, I electronically filed the within Response in Opposition to Defendant's Motion for Summary Judgment with the Clerk of Court using the CM/ECF system, which sent a copy electronically to:

Matthew L. Owens, Esquire  
OWENS BARCAVAGE & MCINROY, LLC  
2000 Linglestown Road, Suite 303  
Harrisburg, PA 17110

Said document is available for viewing and downloading from the ECF system.

Date: 07/23/10

/s/Andrew M. Milz (AMM8059)

ANDREW M. MILZ